

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar

SUBJECT: Resolution

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN CARMAX AUTO SUPERSTORES, INC. AND THE TOWN OF DAVIE IN CASE NUMBER 04-011773(08), AND PROVIDING FOR AN EFFECTIVE DATE.

Carmax Auto Superstores, Inc. ("Carmax"), is the owner of the property which is the subject of this litigation. On June 9, 2004 the Town of Davie ("Town") served Carmax with a Notice of Code Violations and Hearing alleging that Carmax violated Davie Town Code Sections 12-32 and 12-33(U). On June 22, 2004, a code enforcement hearing was held before the Town of Davie Special Magistrate and on June 26, 2004 the Special Magistrate entered a Final Order finding Carmax in violation of Davie Town Code Sections 12-32 and 12-33(U). Camax then appealed the Special Magistrates Final Order and initiated the present lawsuit against the Town within the Broward County Circuit Courts. Carmax contends that a genuine dispute exists between the parties with regard to whether Camax has violated sections 12-32 and 12-33(U) of the Davie Town Code. Carmax then sent the Town a proposed settlement agreement. Thereafter, two executive sessions were held between the Town Attorney and the Town Council to address the proposed settlement agreement. At the executive sessions, the Council addressed the proposed settlement agreement and directed the Town Attorney to include further terms and provisions in the agreement. Carmax has agreed to the Town's further terms and as a result, it is the belief of the Town and Carmax that a settlement of the above referenced lawsuit will be mutually beneficial.

PREVIOUS ACTIONS: N/A

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S) Motion to Approve

ATTACHMENTS: Resolution and Settlement Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN CARMAX AUTO SUPERSTORES, INC. AND THE TOWN OF DAVIE IN CASE NUMBER 04-011773(08), AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Carmax Auto Superstores, Inc. ("Carmax") is the owner of the property which is the subject of this litigation; and

WHEREAS, On June 9, 2004 the Town of Davie ("Town") served Carmax with a Notice of Code Violations and Hearing alleging that Carmax violated the Town Code; and

WHEREAS, on June 22, 2004, a code enforcement hearing was held before the Town's Special Magistrate; and

WHEREAS, on June 26, 2004 the Special Magistrate entered a Final Order finding Carmax in violation of Town Code Sections 12-32 and 12-33(U); and

WHEREAS, Camax has appealed the Special Magistrates Final Order and initiated the present lawsuit against the Town within the Broward County Circuit Courts; and

WHEREAS, a genuine dispute exists between the parties with regard to whether Camax has violated sections 12-32 and 12-33(U) of the Town Code; and

WHEREAS, it is the belief of the Town and Carmax that a settlement of the above referenced lawsuit will be mutually beneficial.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby authorizes the Mayor to execute the Settlement Agreement attached hereto as Exhibit "A" between the Town and Carmax.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER
ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005.

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY FLORIDA

APPELLATE CASE NO. 04-011773(08)
LOWER TRIBUNAL CASE NO. 04-611

CARMAX AUTO SUPERSTORES, INC.,
Respondent/Appellant

v.

TOWN OF DAVIE, Broward County
Florida, a Florida Municipal Corporation,

Petitioner/Appellee

_____ /

SETTLEMENT AGREEMENT

1. The following conditions and statements are agreed to and shall be the prerequisites to the Resolution of this matter.

2. Carmax Auto Superstores, Inc. ("Carmax") is the owner of the property which is the subject of this litigation.

3. On June 9, 2004 Carmax was served with a Notice of Code Violations and Hearing from the Town of Davie ("Town") alleging that Carmax has violated Town Code Sections 12-32 and 12-33(U).

4. On June 22, 2004, a code enforcement hearing was held before the Town's Special Magistrate.

5. On June 26, 2004 the Special Magistrate entered a Final Order finding Carmax in violation of Town Code Sections 12-32 and 12-33(U) and ordered that Carmax come into compliance with said code provisions.

6. Carmax has appealed the Special Magistrates Final Order and initiated the present lawsuit against the Town within the Broward County Circuit Courts.

7. It is the belief of the Town and Carmax that a settlement of the above referenced lawsuit will be mutually beneficial.

8. The parties hereby agree that Carmax will provide each auction attendee with written instructions regarding the proper loading and unloading protocols, which will include a bracketed schedule(s) for loading and unloading vehicles, with such documentation to be provided to attendees at check-in. The documentation will also be posted in conspicuous places about the auction site where auction attendees will be likely to see said instructions.

9. The parties hereby agree that Carmax will audio announce at the auction the proper loading and unloading protocols required to be followed, a schedule(s) for loading and unloading vehicles, and the locations where transporters can load and unload vehicles. However, Carmax agrees that such audio announcements will not violate the Town's Code of Ordinances concerning permitted noise levels and will not disturb the peace and tranquility of the surrounding Town residents who work and/or reside in the area.

10. The parties hereby agree that Carmax will employ and utilize a temporary agency to provide a patrol person(s) to monitor transporter activity and to reiterate loading and unloading protocols from Monday through Wednesdays from 9:00A.M. to 7:00P.M. and at all times that an auction is being operated.

11. The parties hereby agree that Carmax will provide Town-approved signage in connection with parking restrictions in swale areas.

12. The parties hereby agree that Carmax will repair swale areas damaged by any errant parking.

13. The parties hereby agree that Carmax will provide Town-approved signage directing transporters to loading and unloading areas.

14. The parties hereby agree that Carmax will make interior modifications to the approved parking areas to create greater loading and unloading capacity on site. However, such modifications consist only of moving vehicles around in the parking areas and do not consist of structural modifications or any modifications which would alter Carmax's approved site plan. The Town does not agree to any modifications except those already mentioned in this paragraph. The terms contained in this paragraph pertain only to the instant case and said terms do not prohibit Carmax from applying to the Town, in the appropriate manner permitted under the law, for any future modifications that Carmax may wish to make on its property.

15. Each Party agrees to bear its own attorney's fees and costs incurred in this subject litigation.

16. Upon the execution of this Agreement, Carmax shall dismiss its Circuit Court Appeal, case number 04-011773(08), with prejudice.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event that any party brings suit for enforcement of the provisions of the Agreement, the venue of such suit shall be restricted to Broward County. All parties hereto waive the right to a jury trial with regard to any litigation.

18. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations or warranties other than as set forth herein. This

Agreement may not be changed, altered or modified except through consent of all the parties and by an instrument signed by all the parties.

19. Duration of Agreement. Carmax agrees that it will begin to execute the terms of each provision of this agreement immediately upon the execution of this agreement and will continue to execute the terms of each provision of this agreement at all times an auction is being held on the Carmax site.

20. Effective Date. This Agreement shall become effective upon its execution by the parties to the Agreement. Upon the execution of this Agreement, the parties shall notify the court of this Agreement and Carmax shall dismiss the subject cause with prejudice.

SIGNATURE PAGES TO FOLLOW

For Carmax Auto Superstores, Inc.

Sonja K. Dickens
Florida Bar ID No. 0040045
James C. Brady & Associates
Attorneys for Appellant
501 NE 8th Street
Fort Lauderdale, Florida 33304
Phone: 954-760-1404
Fax: 954-761-1489
Attorney for Respondent/Appellant

For the Town of Davie

Tom Truex, Mayor

Monroe D. Kiar
Florida Bar ID No. 177320
6191 S.W. 45th Street
Suite 6151A
Davie, Florida 33314
Phone: 954-584-9770
Fax: 954-584-9723
Attorney for Petitioner/Appellee